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Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies	)	ET Docket No. 92-9

To: The Commission

PETITION FOR RECONSIDERATION

Century Telephone Enterprises, Inc. (Century), by its attorney, hereby requests reconsideration of the Commission's Notice of Proposed Rule Making (NPRM) in the above-captioned proceeding, FCC 92-20, 57 Fed. Reg. 5993, February 19, 1992, insofar as it mandates that applications filed after January 16, 1992 (the adoption date of the NPRM) for fixed operation in the 2 GHz bands involved, will be granted only on a secondary basis, conditioned upon the outcome of this proceeding.[1]

As a preface to this petition, Century applauds the

[1] Century intends to file comments in this proceeding which are due by April 21, 1992. This petition is limited to the Commission's determination, as reflected in paragraph 23 of the NPRM, to make only secondary grants in the 2 GHz band for applications filed after the adoption of the NPRM.

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Commission's efforts, as reflected in the NPRM, to provide suitable frequency spectrum, in an expeditious manner, for personal communication service (PCS) systems and other emerging technologies. However, Century is constrained to take issue with the Commission's interim policy for treating 2 GHz applications filed after the adoption date of the NPRM. Century believes that rescinding this policy or modifying it as suggested herein will still allow the Commission to achieve its stated goals without delaying the rule making or the implementation of PCS and other new technologies. Century wishes to make clear that the instant filing is not intended to inject any element of delay in this proceeding.

In support of this petition, the following is shown:

1. Century is a holding company of landline telephone and cellular radio carriers. It operates in Arizona, Arkansas, Colorado, Idaho, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, Oklahoma, Tennessee, Texas and Wisconsin. During 1991, Century's cellular subscribership increased by 44% and it is expecting approximately the same growth in 1992. Century utilizes microwave radio facilities in both its landline telephone and cellular radio operations. The majority of these microwave facilities is in the 2 GHz band. With the start-up of Century's cellular RSA operations and the expansion of its MSA facilities, new cellular sites are now being added at a rapid pace. As each new cell site is added, Century is reviewing the economic feasibility of

incorporating it in the existing microwave system. Accordingly, the Commission's decisions in this proceeding will have a significant impact on Century's plans for the immediate future. These plans cannot be put on hold pending the outcome of this proceeding without paralyzing Century's expansion and jeopardizing the quality of its service to the public. As an example, Century had plans to upgrade its microwave network in Michigan and to move the existing radios to new cell site locations where new microwave systems are planned. The microwave radios in Michigan have only been in place a little over two years and have not nearly been fully depreciated. Unless the Commission's decision on secondary-basis grants is reversed or modified, Century will effectively be unable to reuse these radios and will suffer substantial financial losses because the resale market for fixed radio equipment in the 2 GHz band will disappear.

2. The NPRM states, at paragraph 23, that 2 GHz applications for fixed microwave systems in the 2 GHz band, filed after January 16, 1992, will be granted only on a secondary basis. Since the NPRM was issued on February 7, 1992 and not published in the Federal Register until February 19, 1992, there was no advance warning of this policy determination. While the term "secondary basis" is not defined in the NPRM, the traditional definition would require secondary-status licensees to give way to primary licensees in the event of an electrical interference conflict. This

would mean that an "emerging technology" (ET) licensee could force the secondary user off the air without compensation if the secondary user caused interference to the ET licensee. Thus, in addition to discouraging further applications in the 2 GHz band, the Commission's action amounts to a virtual "freeze" on new applications pending the outcome of this proceeding. No communications common carrier will want to make the substantial investment required in establishing a fixed microwave system in the 2 GHz band with the knowledge that its facilities may be subjected to harmful interference without recourse and may have to be removed from service on short notice without just compensation.

3. The Commission's policy determination came without advance notice and without the opportunity for public comment. As such, the Commission's action violates the notice and comment requirements set forth in Sections 553 (b) and (c) of the Administrative Procedure Act (APA). The Commission's interim policy of making secondary grants only, pending the outcome of this proceeding, effectively rewrites Section 21.100 (a) of the Commission's Rules which assures licensees in the Point-to-Point Microwave Radio Service that frequency assignments will be made only on an interference-free basis and that grantees will receive exclusive grants in each service area. The interim policy, on the other hand, would allow the Commission to make grants subject to the grantee receiving harmful interference. While the Commission is free

to change the Rule, it may not do so without providing advance notice and allowing public comment,in accordance with Sections 553 (b) and (c) of the APA, and only then after weighing the comments and articulating the basis for the change. In this instance, the Commission has effectively changed Rule Section 21.100 (a) but has cited no authority for failing to comply with the APA. Generally, when the Commission changes one of its Rules without notice and the opportunity for comment, it cites one or more of the exceptions in Section 553 of the APA for its actions. None is cited here.

4. The only clues to the Commission's rationale appear in paragraph 23 and footnote 20 of the NPRM, where the Commission appears to be motivated by the desire "to discourage possible speculative fixed service applications for [the 2 GHz] spectrum" (paragraph 23) and to preclude "windfalls for the incumbent 2 GHz licensees" during market-based negotiations with the would-be ET licensees (footnote 20). Thus, the Commission balanced the future interests of prospective ET licensees against the immediate interests of telephone and cellular carriers; and the latter were outweighed. While Century recognizes the need for an orderly transition if the proposed segment of the 2 GHz band is ultimately selected for the new technologies, it submits that the decision to make only secondary grants, pending the outcome, unfairly discriminates against existing telephone and cellular carriers. Moreover, the Commission's stated

justification for this interim policy determination -- the need to discourage speculative filings and to protect the would-be ET licensees from unscrupulous incumbent licensees seeking windfalls -- is badly misplaced and overlooks reality.

5. In the mobile services, an applicant proposing a high-power station with a high-elevation, omnidirectional antenna is able to tie up a frequency for a radius of perhaps 70 miles or more. In contrast, Part 21 of the Commission's Rules, governing applications in the common carrier Point-to-Point Microwave Radio Service generally permit only low-power stations with narrow beamwidth antennas transmitting along clearly defined paths of relative short distance. The likelihood of a speculative filing tying up a significant amount of 2 GHz spectrum over a substantial area is regarded as remote. Accordingly, there is little likelihood of a substantial number of speculative filings pending the outcome of this proceeding. Moreover, in the event some speculative filings should occur, there are other safeguards the Commission may employ to preclude the grantees from seeking windfalls from prospective ET licensees. And even if some few unscrupulous incumbent licensees attempt to take undue advantage of ET licensees during market-based negotiations, the mere possibility of that coming to pass in isolated instances is insufficient to outweigh the interests of telephone and cellular carriers who have an immediate need for 2 GHz spectrum and who will be severely inconvenienced and

their subscribers disserved by secondary-status grants.

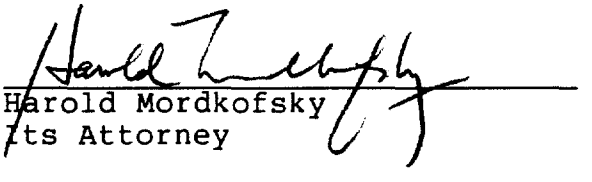
6. Century accordingly submits that the Commission's fears and concerns about speculative filers and windfall seekers are largely unfounded and that secondary-basis grants are unnecessary to achieve the Commission's goals. If the Commission is not convinced, it can better preclude the prospects of mass speculative filings without disruption to the communications industry by reducing the present 18-month construction period for new fixed microwave facilities in the 2 GHz band to, say, 12 months and by instituting a tough policy of not granting extensions except in the most compelling circumstances and only then when it is clear that no speculative motivation is present. If the Commission nonetheless feels that secondary grants are essential, they should not commence for a period of at least six months from the release of the NPRM. The January 16, 1992 cutoff date is unfair to Century and other similarly situated carriers whose 2 GHz plans were already in progress as of that date but who had not yet made application filings. This would more fairly balance the needs of existing carriers whose plans would otherwise have to be changed substantially with concomitant in-service delays and additional financial outlays, all at the public's expense. By putting off the effective date for at least six months, 2 GHz filing plans already in progress could be implemented without the secondary-status stigma. Finally, if the Commission feels compelled to cling to the interim

policy determination announced in the NPRM, it should exempt bona fide telephone and cellular carriers from secondary status grants.

7. In conclusion, Century reiterates that it supports the Commission's goals in this proceeding and recognizes the need for an orderly transition process. However, the Commission's interim policy on secondary grants is beyond the Commission's authority under the APA. Moreover, it will place an undue hardship on the communications common carrier industry at a time when the industry needs 2 GHz frequencies while in the throes of cellular expansion. The Commission's fears and concerns in adopting the interim policy are largely overstated and, in any event, there are viable alternatives in allowing the Commission to achieve an orderly transition to the emerging technologies. In view of the foregoing, the interim policy on secondary grants should be rescinded or modified, as set forth herein.

Respectfully submitted,

Century Telephone Enterprises, Inc.

By: 
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